

EXHIBIT B

KM&M
KAUFF MCCLAIN MC GUIRE LLP

ONE POST STREET • SUITE 2600
SAN FRANCISCO, CA 94104

ALEX HERNAEZ
HERNAEZ@KMM.COM

TELEPHONE (415) 421-3111
TELECOPIER (415) 421-0938

NEW YORK
SAN FRANCISCO
LOS ANGELES
WWW.KMM.COM

August 6, 2007

VIA FACSIMILE (510-891-7030)

Scott Edward Cole, Esq.
Scott Cole & Associates, APC
1970 Broadway, Ninth Floor
Oakland, CA 94612

Re: Runnings v. Dollar Tree Stores, Inc.

Dear Mr. Cole:

Today Defendant Dollar Tree Stores, Inc. will remove the above-captioned matter to the United States District Court for the Northern District of California. In addition, Dollar Tree will be filing a motion seeking a Temporary Restraining Order and Preliminary Injunction. The motion will be based upon the letter sent by your firm to the putative class members, which we believe was wholly improper. A draft of the TRO papers is attached. I will formally serve the papers when we secure a hearing date.

Sincerely,



ALEX HERNAEZ

AH:jal
Enclosures

cc: Matthew R. Bainer (w/ Encls.; via Facsimile)
120443.v1

1 ALEX HERNAEZ (State Bar No. 201441)
2 MAUREEN E. McCALIN (State Bar No. 062050)
3 MATTHEW P. VANDALL (State Bar No. 196962)
4 KAUFF McCALIN & MCGUIRE LLP
5 One Post Street, Suite 2600
6 San Francisco, California 94104
7 Telephone: (415) 421-3111
8 Facsimile: (415) 421-0938
9
10 Attorneys for Defendant
11 DOLLAR TREE STORES, INC.

DRAFT

8 UNITED STATES DISTRICT COURT
9 NORTHERN DISTRICT OF CALIFORNIA

11 ROBERT RUNNINGS individually, and on
12 behalf of all others similarly situated,

13 Plaintiff,

14 v.

15 DOLLAR TREE STORES, INC, and DOES
16 1 through 25, inclusive,

17 Defendants.

CASE NO.

DEFENDANT DOLLAR TREE
STORES, INC.'S EX PARTE
MOTION FOR TEMPORARY
RESTRAINING ORDER;
MEMORANDUM OF POINTS AND
AUTHORITIES IN SUPPORT;
CERTIFICATE OF NOTIFICATION

COMPLAINT FILED: July 6, 2007
TRIAL DATE: No date set.

1 DEFENDANT DOLLAR TREE STORES, INC.'S EX PARTE MOTION
2 FOR TEMPORARY RESTRAINING ORDER

3 TO PLAINTIFF AND HIS ATTORNEYS OF RECORD:

4 PLEASE TAKE NOTICE that on August __, 2007, in Courtroom __ of the
5 United States District Court, Northern District of California, 450 Golden Gate Avenue,
6 ____ Floor, San Francisco, California, at _____, or as soon thereafter as counsel may be
7 heard, Defendant Dollar Tree Stores, Inc. ("Dollar Tree") will ask that, pursuant to Fed.
8 R. Civ. P. 65, Fed. R. Civ. P. 23 and Local Rule 65,¹ the Court issue a Temporary
9 Restraining Order prohibiting Scott Cole & Associates, counsel for Plaintiff Robert
10 Runnings ("Plaintiff"), from communicating in any fashion with members of the putative
11 class.

12 The motion will be based upon the Complaint at issue, this Notice of
13 Motion and Motion, the Memorandum of Points and Authorities, the Certificate of
14 Notification, the Declaration of Mark Soderholm, the argument of counsel, the pleadings
15 and papers filed herein, and upon any other matters properly considered by the Court.

16 DATED: August __, 2007

KAUFF McCLAIN & McGuire LLP

17 By: _____
18 ALEX HERNAEZ

19 Attorneys for Defendant
20 DOLLAR TREE STORES, INC.

21
22
23
24
25
26 ¹ Citation to the Federal Rules of Civil Procedure will be "Rule ____." Citation to the Local Rules
for the Northern District of California will be to "Local Rule ____."
27

1 **MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF**
 2 **DEFENDANT DOLLAR TREE STORES, INC.'S EX PARTE MOTION FOR**
 3 **TEMPORARY RESTRAINING ORDER**

4 **I. INTRODUCTION**

5 Filed on July 6, 2007 in the Alameda County Superior Court, this lawsuit is
 6 a wage and hour class action in the precertification stage. It was removed to this Court
 7 on August 6, 2007, twenty-six days after service of the summons and complaint. The
 8 putative class members are certain present and former Store Managers of Dollar Tree.
 9 For the reasons discussed below, Defendant asks that this Court issue a Temporary
 10 Restraining Order ("TRO") prohibiting counsel for Plaintiff from communicating in any
 11 fashion with members of the putative class.

12 Without any notice to Dollar Tree, Scott Cole & Associates has sent Letters
 13 to Store Managers containing demonstrably false information and violating the California
 14 Rules of Professional Conduct. These Letters appear calculated to pressure recipients
 15 into entering into an attorney-client relationship with the firm. If injunctive relief is not
 16 issued, Dollar Tree will suffer—**and likely has already suffered**—irreparable injury
 17 because Scott Cole & Associates is poisoning the pool of putative class members, which
 18 is something that cannot be undone. And, if Store Managers accept the tainted
 19 invitations and become clients of Scott Cole & Associates, Dollar Tree will be unable to
 20 investigate and defend this lawsuit. See Cal. Rules of Prof'l Conduct, Rule 2-100
 21 (Communication With a Represented Party). Moreover, because the Letter is so clearly
 22 improper, the likelihood of success on the merits is high. Accordingly, a TRO should
 23 issue pending a hearing for preliminary injunction.

24 The tactics of Scott Cole & Associates simply are not contemplated by the
 25 provisions of Rule 23:

26 Misleading communications to class members concerning the
 27 litigation pose a serious threat to the fairness of the litigation
 28 process, the adequacy of representation and the
 29 administration of justice generally.

30 In re School Asbestos Litigation, 842 F.2d 671, 680 (3d Cir. 1988).

1 As part of the relief it seeks on this TRO application, Dollar Tree requests
 2 the Court's permission to obtain expedited discovery concerning the circumstances
 3 surrounding the development and distribution of the Letter. Dollar Tree further intends to
 4 seek an Order addressing the harm caused by the Letter, which depending on the
 5 number of Letters mailed or other factors regarding the Letter, may include one or more
 6 of the following alternatives: the disqualification of the firm, sanctioning the firm for
 7 sending the Letter in the first instance, and/or instituting court supervision over
 8 communications with the putative class members by Runnings' lawyers.

9 **II. FACTS**

10 During the week of July 30, 2007, Steve Mason, a Dollar Tree Store
 11 Manager, gave a Letter he had received in the mail to Mark Soderholm, his direct
 12 supervisor and a Dollar Tree District Manager. The Letter at issue is attached as Exhibit
 13 A to Mr. Soderholm's accompanying Declaration and its envelope is attached as Exhibit
 14 B. Based upon the format of the Letter, Dollar Tree believes multiple copies have
 15 already been mailed. As discussed below, absent Court intervention, additional mailings
 16 of this Letter, together with other contacts threatened in the Letter, will further irreparably
 17 damage Dollar Tree's ability to defend this case.

18 **III. ARGUMENT**

19 Because trial court involvement in the notice process is
 20 inevitable in cases with numerous plaintiffs where written
 21 consent is required by statute, it lies within the discretion of a
 22 district court to begin its involvement early, at the point of the
 23 initial notice, rather than at some later time. One of the most
 24 significant insights that skilled trial judges have gained in
 25 recent years is the wisdom and necessity for early judicial
 26 intervention in the management of litigation.

27 Hoffmann-La Roche, Inc. v. Sperling, 493 U.S. 165, 172 (1989).

28 Even before a responsive pleading has been filed by Dollar Tree, Runnings
 29 and his counsel have intruded upon (and perhaps destroyed) the fair notice process
 30 contemplated by Rule 23. Indeed, the Letter has undermined whatever fairness
 31 previously existed in the class action process as a whole. The Court's intervention is

1 needed.

2 A. **The Letter Violates The California Rules of Professional Conduct.**

3 "When engaging in precertification communications, as is equally true with
 4 any communication, a member of the State Bar of California must comply with the
 5 requirements of the Rules of Professional Conduct." Mevorah v. Wells Fargo Home
 6 Mortg., Inc., 2005 U.S. Dist. LEXIS 28615 *11 (N.D. Cal. 2005). Rule 1-400 governs
 7 attorney "communications," which are defined as follows:

8 [A]ny message or offer made by or on behalf of a member
 9 concerning the availability for professional employment of a
 10 member or a law firm directed to any former, present, or
 prospective client, including but not limited to the following:
 11 * * * *

12 (4) Any unsolicited correspondence from a member or law
 firm directed to any person or entity."

13 Cal. Rules of Prof'l Conduct, Rule 1-400(A)(4).

14 The Letter qualifies as a "communication" under this rule. Therefore, as a
 15 communication, it may not:

16 (1) Contain any untrue statement; or
 17 (2) Contain any matter, or present or arrange any matter
 18 in a manner or format which is false, deceptive, or which
 tends to confuse, deceive, or mislead the public; or
 19 (3) Omit to state any fact necessary to make the
 20 statements made, in the light of circumstances under which
 they are made, not misleading to the public; or
 21 * * * *

22 Cal. Rules of Prof'l Conduct, Rule 1-400(D)(1-3).

23 Moreover, pursuant to rule 1-400(E), the Board of Governors of the State
 24 Bar has adopted the following standards which are presumed to be in violation of Rule 1-
 25 400:
 26 (1) A "communication" which contains guarantees,
 27 warranties, or predictions regarding the result of the
 representation.

(2) A "communication" which contains testimonials about or endorsements of a member unless such communication also contains an express disclaimer such as "this testimonial or endorsement does not constitute a guarantee, warranty, or prediction regarding the outcome of your legal matter."

* * * *

Cal. Rules of Prof'l Conduct, Standards 1-2.

The Letter violates multiple provisions of Rule 1-400.

1. The Letter Overstates The Scope Of The Lawsuit As Well As Its Potential Value.

The Letter claims that Scott Cole & Associates filed a class action lawsuit “on behalf of all California Store Managers working for Dollar Tree Stores at any time after July 6, 2003” (emphasis in original). It repeats this assertion in Paragraph 2, lines 5-6 and then claims that Store Managers may receive overtime pay “going back as many as four years.” These assertions constitute knowing misrepresentations of fact.

Plaintiff's counsel participated in Williams v. Dollar Tree Stores, Inc., Case No. 01CC00329 (Orange County Superior Court), which involved, *inter alia*, a claim for overtime by Store Managers.² The prior lawsuit is specifically referenced in the Complaint. See Compl., p. 3, 6. As Plaintiff's counsel well knows, the settlement of Williams covered all non-opt out Store Managers through December 11, 2004.³ Hence, it cannot be correct that this lawsuit covers all Store Managers working after July 6, 2003. Moreover, as to Mr. Mason and nearly all other Store Managers (*i.e.*, all except the 8 opt-outs), the third statement is equally false. Except for the eight opt-outs, damages can go back only to December 12, 2004. **The letter misstates the relevant recovery period by more than one-year and five months.** Accordingly, these assertions patently violate Rule 1-400(D)(1). See also Belt v. Emcare Inc., 299 F. Supp.

² There were only eight opt-outs.

³ See Declaration of Kathleen E. Mallas, ¶ 10 (filed in conjunction with Defendant's removal papers).

1 2d 664, 668 (E.D. Tex. 2003)(ex parte communication improper where "it
 2 mischaracterized the damages available to the putative class").

3 **2. The Letter Offers "Predictions Regarding The Result Of The**
 4 **Representation."**

5 The Letter boasts that the firm has "scrutinized Dollar Tree's practices for
 6 years and, based upon [their] extensive investigation believe" that Dollar Tree has
 7 violated the law. The Letter also states that they have performed an "investigation"
 8 which has convinced the firm that Store Managers are not performing managerial tasks.
 9 Dollar Tree contends that these assertions constitute predictions regarding the result of
 10 representation and therefore constitute a presumptive violation under Standard (1) of
 Rule 1-400.

11 **3. The Letter Omits Full Disclosure Of Material Facts And**
 12 **Provides An Implicit Endorsement.**

13 Citing to Rule 1-400(D)(3), the Court in In re McKesson HBOC, Inc. Sec.
 14 Litig., 126 F. Supp. 2d 1239, 1245 (N.D. Cal. 2000) found certain mailings to be
 15 improper because, *inter alia*, they "do not identify the court-appointed lead plaintiff and
 16 counsel . . ." Here, the Letter claims the "named plaintiff is so convinced of this [*i.e.*, a
 17 violation of law] that he filed this case on behalf of all California Store Managers (since
 18 July 6, 2003) so that they each may hopefully receive whatever backpay they're owed."
 19 However, as in McKesson HBOC, the individual at issue is not identified. This omission
 20 is improper under Rule 1-400(D)(3).

21 The Letter also omits to discuss the fact that determining whether a
 22 particular position is exempt or non-exempt requires an individualized analysis of that
 23 position's duties. By omitting this fact, the Letter suggests that all Store Managers are
 24 similarly situated to the anonymous "named plaintiff" and that Scott Cole & Associates
 25 has made some kind of investigation resulting in a conclusion that each one of the
 26 hundreds of Store Managers is non-exempt.

27 Moreover, Standard (2) of Rule 1-400 prohibits "endorsements of a

1 member" unless an express disclaimer is provided. The facts asserted regarding the
 2 named plaintiff constitute an implicit endorsement of Scott Cole & Associates. A Store
 3 Manager could easily reason that if the firm is "good enough" for a colleague (even an
 4 unnamed one), it should be "good enough" for him or her. Therefore, because the Letter
 5 contains no disclaimer, it is a presumptive violation of Rule 1-400.

6 **4. The Letter Threatens An Improper "Solicitation."**

7 Incredibly, the Letter promises a further violation of Rule 1-400(D). As
 8 distinct from a "communication," a "solicitation" is defined to include the making of a
 9 telephone call "[c]oncerning the availability for professional employment of a member or
 10 a law firm in which a significant motive is pecuniary gain." Cal. R. Prof. Conduct 1-
 11 400(B)(1) & (B)(2)(a). Solicitations are generally prohibited:

12 A solicitation shall not be made by or on behalf of a member
 13 or law firm to a prospective client with whom the member or
 14 law firm has no family or prior professional relationship,
 15 unless the solicitation is protected from abridgment by the
 Constitution of the United States or by the Constitution of the
 State of California. A solicitation to a former or present client
 in the discharge of a member's or law firm's professional
 duties is not prohibited.

16 See Cal. R. Prof. Conduct 1-400(C).

17 Notwithstanding this prohibition, the Letter actually threatens a subsequent
 18 violation: "As this case progresses, we will be providing you with additional information,
 19 either by letter or by telephone."

20 **5. The Letter Is Confusing In That It Suggests The Recipient Is
 Already A Class Member And It Calls Itself A "Newsletter."**

21 In one place the letter says "we have not yet asked the Court overseeing
 22 this lawsuit to join all Store Managers into the case." However, the footer reads:
 23 "S\Clients\Runnings\Correspondence\Class Members\2007\Outgoing\Newsletter g27
 24 wpd." This line suggests that the recipient is already a "Class Member" in the litigation.
 25 Thus, at the very least the Letter would "tend to confuse" in violation of Rule 1-400(D)(2).
 26 Adding to this confusion is the Letter's title of "NEWSLETTER." It is true that Standard
 27

1 (5) of Rule 1-400 requires that "communications" be titled "Advertisement, Newsletter or
 2 words of similar import." But the document is simply not a newsletter in any conventional
 3 sense of the word. Rather, it is an unabashed and unsolicited invitation to become a
 4 client of Scott Cole & Associates. The Letter's title should truthfully reflect its contents; it
 5 does not.

6 **B. The Letter Is A Misleading, Coercive, And Improper Communication**
 7 **With The Putative Class.**

8 Rule 23(d) of the Federal Rules of Civil Procedure gives the court broad
 9 powers to make "appropriate orders" to ensure efficient and fair proceedings in a class
 10 action. McKesson HBOC, 126 F. Supp. 2d at 1242. Specifically, the court is authorized
 11 to enter orders "requiring, for the protection of the members of the class or otherwise for
 12 the fair conduct of the action," as well as orders "imposing conditions on the
 13 representative parties or on intervenors." See Rule 23(d)(2-3). The court's Rule 23(d)
 14 powers include the authority to enjoin communications with class members to protect
 15 them from undue interference. See Gulf Oil Co. v. Bernard, 452 U.S. 89 (1981). And
 16 "[c]ourts have limited pre-certification communications with potential class members after
 17 misleading, coercive, or improper communications were made." Mevorah, 2005 U.S.
 18 Dist. LEXIS 28615 at *11; see also Belt, 299 F. Supp. 2d at 667 (ex parte
 19 communication improper because it "tapped into fears and concerns" of putative class).

20 As discussed in § A above, the Letter suffers from numerous specific and
 21 serious defects. However, the fundamental problem is that the Letter is nothing but an
 22 invitation to become a client of Scott Cole & Associates, which is made with a one-sided,
 23 factually incorrect, and argumentative presentation of the issues. And that invitation is
 24 express:

25 **If you have any questions regarding your rights in this
 case, please do not hesitate to contact our office.**

26 **That's what we're here for.**

27 *** *

1 We urge you to contact us today to discuss this case and the
 2 role you may play in it. In staying abreast of these
 3 developments, you should know that **you have the right to**
 4 **communicate with our office on a confidential basis.** If
 5 you wish to have a consultation about your legal rights and
 6 you wish to treat the conversation as a privileged attorney-
 7 client communication, we will gladly do so.

8 (Emphasis in original).

9 “Rule 23 contemplates that putative class members will make an informed
 10 decision about their decision to opt out of a class.” McKesson HBOC, 126 F. Supp. 2d
 11 at 1243. In fact, the “potential plaintiffs are not ‘represented parties’ for the purposes of
 12 California State Bar Rules of Professional Conduct, rule 2-100.” Tierno v. Rite Aid Corp.,
 13 2006 U.S. Dist. LEXIS 71795 *7 (N.D. Cal. 2006). “This means that both sides should
 14 have equal access and freedom to communicate with potential class members in the
 15 pre-certification stage because both sides should be permitted to investigate the case
 16 fully.” Id. (internal citations omitted).

17 Here, the Letter is attempting to subvert what should be a fair process by
 18 using false information in a bid to secure an attorney-client relationship. Creating this
 19 relationship, especially when done through the use of false statements, is inconsistent
 20 with Rule 23 and cannot be allowed to occur. In addition, the Letter in effect is
 21 preempting the class notice stage, where putative class members are told in neutral and
 22 balanced language of their rights and of the positions of all parties. “Misleading
 23 communications by soliciting counsel have a detrimental effect on the class notice
 24 procedure and, therefore, on the fair administration of justice.” In re Cmty. Bank of N.
 25 Va. Loan Litig., 418 F.3d 277, 311 (3d Cir. 2005). Depending on the scope of the
 26 mailing, the Letter, which essentially calls Dollar Tree’s management liars (“. . . our
 27 investigation convinces us this is untrue.”) and concludes that something illegal has
 28 happened (“. . .we think to be an illegal practice.”), may already have destroyed the
 29 integrity of this process.

1 **C. A Temporary Restraining Order And Subsequent Preliminary
2 Injunction Is An Appropriate Remedy.**

3 “Preliminary injunctive relief is available to a party who demonstrates either
4 (1) a combination of probable success and the possibility of irreparable harm, or (2) that
5 serious questions are raised and the balance of hardship tips in its favor. These two
6 formulations represent two points on a sliding scale in which the required degree of
7 irreparable harm increases as the probability of success decreases.” Arcamuzi v.
8 Continental Air Lines, Inc., 819 F.2d 935, 937 (9th Cir. 1987) (internal citations omitted).
9 “Under any formulation of the test, the moving party must demonstrate a significant
10 threat of irreparable injury.” Id. Here, injunctive relief is proper because Dollar Tree can
11 show both a probability of success and the possibility of irreparable harm.

12 **1. The Likelihood Of Success On The Merits Is High.**

13 In this procedural context, the question of “success on the merits” means
14 whether Dollar Tree will be able to show that Plaintiff’s counsel has improperly
15 communicated with the putative class. E.g., Vogt v. Tex. Instruments Inc., 2006 U.S.
16 Dist. LEXIS 96515 *17 (N.D. Tex. 2006)(In the context of a collective action under the
17 FLSA: “The court agrees with [defendant] that, given the procedural posture of this
18 action, it may satisfy the first element by showing a substantial likelihood of success of
19 narrowing the scope of the conditionally certified class.”). Here, because the Letter
20 contains demonstrable false assertions as well as presumptive violations of the
21 California Rules of Professional Conduct, the likelihood of success on this question is
22 high.

23 **D. Absent Intervention, Dollar Tree Will—And Most Likely Already Has—
24 Suffered Irreparable Harm.**

25 In Vogt, the Court found that where a misleading document has been
26 circulated to putative class members, “a substantial threat of immediate and irreparable
27 injury” exists because “future distribution of the [document] would prejudice [defendant]
28 and usurp the court’s managerial authority to oversee the collective action.” Id. at *18.

1 The same holds true in this case. Because the letter has false information, its further
 2 dissemination to putative class members can only prejudice Dollar Tree and render the
 3 Rule 23 procedures unfair. And there is no remedy for this injury. If putative class
 4 members are exposed to misinformation, they may refuse to cooperate with Dollar
 5 Tree's investigation no matter what type of correction is offered.

6 On this issue Vogt is directly on point: "as misleading commercial speech
 7 does not merit First Amendment protection⁴ . . . [defendants] interest in monitoring
 8 information provided to potential class members outweighs any interest [Plaintiff's] may
 9 have in distributing the [document]." Id. at *17-18. "[E]njoining Plaintiffs and their
 10 counsel from distributing the [document] in the future promotes rather than disserves the
 11 public interest. The [document] is likely to deceive, instead of inform, potential class
 12 members about the lawsuit; therefore the court may prohibit further distribution." Id. at
 13 *18. The same is true of the Letter.

14 Nor is the threat imaginary. The Letter was addressed to "Store Manager"
 15 and sent to the address of a Dollar Tree store in Visalia. To the extent it has not already
 16 done so, it is reasonable to assume that Scott Cole & Associates hopes to replicate this
 17 Letter throughout Dollar Tree's California stores. Moreover, as noted above, the Letter
 18 itself promises further communications: "As this case progresses, we will be providing
 19 you with additional information, either by letter or by telephone." Therefore, there is a
 20 very real basis that additional harm is imminent.

21 **IV. CONCLUSION**

22 Dollar Tree asks that a Temporary Restraining Order be issued prohibiting
 23 Scott Cole & Associates from communicating in any fashion with members of the
 24 putative class.

25 _____
 26 ⁴ Citing to *Central Hudson Gas & Elec. Corp. v. Public Serv. Comm'n*, 447 U.S. 557, 563
 27 (1980).

1 DEFENDANT DOLLAR TREE STORES, INC.'S CERTIFICATE OF
2 NOTIFICATION

3 Dollar Tree first provided to Scott Cole, Esq. of the firm Scott Cole &
4 Associates notice of its intent to move for an ex parte TRO on August 6, 2007 10:45 a.m.

5 DATED: August __, 2007

KAUFF McCCLAIN & McGUIRE LLP

6
7 By: _____
8 ALEX HERNAEZ
9

Attorneys for Defendant
DOLLAR TREE STORES, INC.

10 120435.v1

11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

1 MAUREEN E. McCLAIN (State Bar No. 062050)
 2 Email: mcclain@kmm.com
 3 ALEX HERNAEZ (State Bar No. 201441)
 4 Email: hernaez@kmm.com
 5 MATTHEW P. VANDALL (State Bar No. 196962)
 6 Email: vandall@kmm.com
 7 KAUFF McClain & McGuire LLP
 8 One Post Street, Suite 2600
 9 San Francisco, California 94104
 10 Telephone: (415) 421-3111
 11 Facsimile: (415) 421-0938

DRAFT

12 Attorneys for Defendant
 13 DOLLAR TREE STORES, INC.

14
 15 UNITED STATES DISTRICT COURT
 16 NORTHERN DISTRICT OF CALIFORNIA

17 ROBERT RUNNINGS individually, and on
 18 behalf of all others similarly situated,

19 Plaintiff,

20 v.

21 DOLLAR TREE STORES, INC, and DOES
 22 1 through 25, inclusive,

23 Defendants.

CASE NO.

**DECLARATION OF MARK
 SODERHOLM IN SUPPORT OF
 DEFENDANT'S EX PARTE
 MOTION FOR TEMPORARY
 RESTRAINING ORDER**

COMPLAINT FILED: July 6, 2007
 CASE REMOVED: August 6, 2007
 TRIAL DATE: No date set.

19 I, Mark Soderholm, do hereby declare:

20 1. I am employed as a District Manager for Dollar Tree Stores, Inc.

21 My work location is Fresno, California. I oversee eleven retail stores located in Fresno
 22 and surrounding areas. The Store Managers of those retail locations report to me.

23 2. I submit this declaration to identify Exhibits A and B. I have
 24 personal knowledge of the facts contained in this declaration.

25 3. Exhibit A is a true and correct copy of a letter recently given to me
 26 by one of the Store Managers in my District. That Store Manager, Steve Mason, told me
 27 that he had received the letter attached as Exhibit A in the mail at the Dollar Tree store
 28 where he works in Visalia, California. Mr. Mason also provided me with the envelope in

1 which Exhibit A was mailed. A true and correct copy of the front of that envelope is
2 attached as Exhibit B. 2333 S. Mooney Blvd. is the address of the Dollar Tree store in
3 Visalia, CA.

4 4. I first had knowledge of Exhibit A during the week of July 30, 2007.

5 I declare under penalty of perjury under the laws of the State of California
6 and the United States of America that the above statement is true and correct. Executed
7 on August 3, 2007 in Fresno, California.


Mark Soderholm

10 120417.v1
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

KAUFF, McCRAIN
& MCQUIRE LLP
ONE POST STREET
SUITE 2000
SAN FRANCISCO, CA 94104
TELEPHONE (415) 421-3111

-2-

DECLARATION OF MARK SÖDERHOLM IN SUPPORT OF
DEFENDANT'S EX PARTE MOTION FOR TEMPORARY
RESTRAINING ORDER

CASE NO.

SCOTT EDWARD COLE, ESQ
MATTHEW R. BAINER, ESQ

MATTHEW R. BAINER, ESQ
Writer's E-Mail: mbainer@scalaw.com

SCA Web Site: www.scalaw.com

SCOTT COLE & ASSOCIATES
A PROFESSIONAL CORPORATION
ATTORNEYS & COUNSELORS
THE WORLD SAVINGS TOWER
1970 BROADWAY NINTH FLOOR
OAKLAND CALIFORNIA 94612

Oakland, California Office
Telephone (510) 891 9800
Fax (510) 891 7030

Patterson, California Office
23 North El Circulo Avenue
Patterson, California 95363
Telephone (209) 892 2508
Fax (209) 892 1621

July 27, 2007

NEWSLETTER

re **DOLLAR TREE STORES, INC STORE MANAGERS**
Overtime Pay Class Action Update

Dear Store Manager

As you may have heard, on July 6, 2007, our law firm filed a class action lawsuit in Alameda County Superior Court on behalf of all California Store Managers working for Dollar Tree Stores at any time after July 6, 2003. The lawsuit alleges that Dollar Tree denied overtime pay, meal and rest breaks to Store Managers across the state. Although Dollar Tree may claim that Store Managers spend most of their time performing 'management' type tasks (i.e., not cashing, stocking or merchandising), our investigation convinces us that this is untrue.

We have scrutinized Dollar Tree's practices for years and, based upon our extensive investigation believe that its Store Managers are actually spending most of their work time on activities such as clerking, stocking, and filling out routine paperwork tasks that are commonly performed by hourly workers and, if true, should entitle Store Managers to overtime pay, going back as many as *four years*. In fact the named plaintiff is so convinced of this that he filed this case on behalf of *all* California Store Managers (since July 6, 2003) so that they each may hopefully receive whatever back pay they're owed.

As a law firm dedicated to prosecuting wage violations such as those alleged here we are committed to fighting for the rights of Store Managers and, hopefully, putting an end to what we think to be an illegal practice. Although we have not yet asked the Court overseeing this lawsuit to join all Store Managers into the case, we would like your support in doing so.

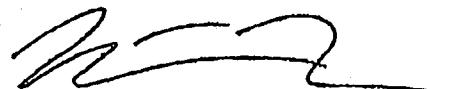
Finally, we just learned that Dollar Tree may wish you to sign a statement indicating that your work does not entitle you to overtime pay and/or that you worked little or no overtime hours. Be careful. You should know that you are not required to sign any statement, whether prepared by Dollar Tree, by our law firm, or anyone unless you really believe that what you're signing is true. If you have any questions regarding your rights in this case, please do not hesitate to contact our office.

That's what we're here for

As this case progresses, we will be providing you with additional information, either by letter or by telephone. These contacts do not obligate you to do anything. We also urge you to contact us today to discuss this case and the role you may play in it. Our job is to keep you informed and make sure you understand your rights. In staying abreast of these developments, you should also know that you have the right to communicate with our office on a confidential basis. If you wish to have a consultation about your legal rights and you wish us to treat the conversation as a privileged attorney-client communication, we will gladly do so.

Thank you for taking the time to review this Newsletter. We look forward to hearing from you.

Very truly yours,



MATTHEW R. BAINER

MRB rdr

IT COLE & ASSOCIATES APC
ATTORNEYS AND COUNSELORS
The World Savings Tower
1970 Broadway Ninth Floor
Oakland CA 94612

* * * * *
160 2100 \$00 410 JUL 27 77
8-66 MAILED FROM OAKLAND CA 94612

NEWSLETTER
Attn Store Manager
Dollar Tree Store Inc
2333 S Mooney Blvd
Visalia CA 93277-6228

932778E228 302. 111111111111111111111111

EXHIBIT B

*** TX REPORT ***

TRANSMISSION OK

TX/RX NO
 RECIPIENT ADDRESS
 DESTINATION ID
 ST. TIME
 TIME USE
 PAGES SENT
 RESULT

4506
 15108917030
 08/06 10:44
 07'37
 20
 OK

KM&M
 KAUFF MCCLAIN MCGUIRE LLP

ATTORNEYS AT LAW

ONE POST STREET
 SUITE 2600
 SAN FRANCISCO, CALIFORNIA 94104

TELEPHONE (415) 421-3111 FAX (415) 421-0938

NEW YORK
 SAN FRANCISCO
 LOS ANGELES
 WWW.KMM.COM

FAX COVER SHEET

This facsimile contains PRIVILEGED AND CONFIDENTIAL INFORMATION intended only for the use of the Addressee(s) named below. If you are not the intended recipient of this facsimile, or the agent responsible for delivering it to the intended recipient, you are hereby notified that any dissemination or copying of this facsimile is strictly prohibited. If you have received this facsimile in error, please immediately notify us by telephone and return the original facsimile to us at the above address via the U.S. Postal Service. Thank you.

DATE: August 6, 2007

FILE NUMBER: 11181.0005

To:

NAME	FAX No.	PHONE NO.
Scott Edward Cole, Esq.	(510) 891-7030	(510) 891-9800
Scott Cole & Associates, APC		

CC:

Matthew R. Bainer, Esq. Scott Cole & Associates, APC	(510) 891-7030	(510) 891-9800
---	----------------	----------------

FROM: Alex Hernaez, Esq.

RE: Runnings v. Dollar Tree Stores, Inc.

NUMBER OF PAGES WITH COVER PAGE: 20

ORIGINAL WILL NOT FOLLOW

MESSAGE: